

**IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY**

Kegler Brown Hill & Ritter Co., LPA, : **Case No. 23 EX 125**

Judgment Creditor, : **Judge J. Brown**

vs. :

Carlo M. Croce, :

Judgment Debtor. :

**REPLY BRIEF OF PLAINTIFF/JUDGMENT CREDITOR IN SUPPORT OF
ITS MOTION TO SELL PERSONAL PROPERTY SEIZED BY SHERIFF
BY PRIVATE SELLING OFFICER**

In response to Plaintiff/Judgment Creditor KBHR’s Motion to Sell Personal Property Seized by Sheriff by Private Selling Officer (“Motion”) Defendant/Judgment Debtor Carlo M. Croce (“Debtor”) complains that the personal property seized and levied upon by the Sheriff, which consists of over 300 works of Old Masters Paintings and Drawings (collectively “Art”), should not be sold by the most renowned experts of such type of Art. Debtor appears to prefer a sale of his Old Masters paintings through public auction in Ohio by the sheriff, unassisted by anyone skilled in marketing this type of art and without access to the specialized buyers of the Art. Debtor’s opposition is nothing more than one more obvious attempt to further delay and avoid paying his judgment. As set forth in its Motion and in the attached Affidavit of Sotheby’s, Old Masters Art is a category of art created by European artists from the approximate period 1300 to 1800 and includes artists from the Early Renaissance through to the Romantic movement. See Affidavit of Sotheby’s (“Affidavit”) at ¶1, attached hereto as **Exhibit 1**. Sotheby’s hosts over 600 auctions annually and offers a cross-category selection of items available for immediate purchase via both digital and physical shopping experiences as well as private sales. Affidavit ¶4.

Sotheby's Old Masters team has been the dominant force in the market for a generation. Sotheby's global team leads the market, selling a higher value of Old Masters at auction than any competitor for the eighth time in the last ten years including the sale of Rembrandt's Self-Portrait for £14.5 million. At the beginning of 2021, Sotheby's sold Sandro Botticelli's Portrait of a young man holding a roundel for \$92.2m, making it one of the most valuable Old Master paintings ever sold at auction. In 2019, Sotheby's launched the largest ever selling exhibition of Old Masters in Asia with great success. In 2020, Sotheby's also partnered with Old Master galleries and dealers across the world to present unique online-only auctions that supported the industry through challenging times. Affidavit ¶¶5-6.

In addition to this, Sotheby's has extensive experience in selling art collections for individuals, estates, and companies throughout Ohio. Indeed, Sotheby's has registered for, and regularly pays sales tax to the State of Ohio. Affidavit ¶7. In fact, Debtor, himself, has bought and sold Old Master drawings and paintings through Sotheby's, and Sotheby's has extensive experience with such artwork. Affidavit ¶8. There are very few auction houses in the United States with expertise to sell an Old Masters collection. This artwork has a very particular group of collectors that Sotheby's has cultivated for decades. Affidavit ¶9. Finally, Sotheby's is prepared to retain, and work with, an independent contractor based out of the State of Ohio with expertise in Old Masters if that would alleviate any concerns. Affidavit ¶10.

In this case, equity permits this Court the discretion to appoint a private selling officer to assist the sheriff in selling the Art. As noted in the Motion, the sheriff is not an expert in the area of Old Masters Art, nor does the sheriff's office have the capability, wherewithal, or expertise to market, sell and find buyers for such Art that would maximize the return of the proceeds. Debtor does not propose any alternative to Sotheby's and does not make any effort explain why he would

want the Art sold by less qualified individuals. This is because the Debtor does not want the Art to be sold to satisfy his debt, and he will put up every roadblock possible to avoid it.

There can be no dispute that Sotheby's is well qualified to assist with the sale of the Art. If its location outside of Ohio is of concern, Sotheby's has agreed to retain and work with an independent contractor based in the State of Ohio with expertise in Old Masters art to facilitate the sale. Further, if Debtor prefers, this Court can require that the sheriff and/or Plaintiff obtain appraisals of three disinterested appraisers, at the Debtor's cost.

Finally, Debtor again claims that the writ of execution was improper and should be dissolved. As set forth in Opposition to Debtor's Motion to Dissolve/Quash the Alias Praecipe, the Debtor was served with notice of the writ, was present during the execution, and was well aware that the sheriff performed his obligations. The cases all cited by Debtor were amercement cases seeking recovery against a sheriff and are inapplicable. Moreover, as previously stated, the Debtor had actual notice of the writ and requested a hearing. See *Wicox v. K.B. Co.*, 1905 Ohio Misc. LEXIS 367 (8th Dist. 1905) (even if the return of the sheriff on the order of attachment was not according to law, the debtor had actual notice and answered, and therefore, there is no defect in the service of the writ); *Everson v. Rule*, 1934 Ohio Misc. LEXIS 1481 (Hamilton Cty. 1934), citing *Houk v. Condon, supra* at 547 ("A levy will not be lost except by some positive act showing an intention or unwillingness to part with the control of the property levied on, or for a neglect to enforce it for so long a time as to indicate that it has been purposely abandoned.").

Debtor's unsupported claim that Sotheby's has undervalued his artwork is neither true nor pertinent. Ultimately, the buyers will determine the value of the Art, and it is in Sotheby's best interest to generate the highest prices for each piece. If Debtor were aware of an auction house better able to attract top dollar for the Art, he was free to recommend another, but he did not.

KBHR's judgment against the Debtor exceeds \$1 million. Accordingly, this is no minor collection matter. Despite the Debtor's protests, the Court has the discretion to permit the appointment of Sotheby's as a private selling officer to assist the sheriff in selling the artwork previously levied upon by the sheriff. For these reasons, KBHR respectfully moves this Court to permit Sotheby's to act as a private selling officer of the artwork levied upon by the Sheriff.

Submitted by:

/s/ Maria Mariano Guthrie

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Counsel for Plaintiff

Kegler, Brown, Hill & Ritter, Co., LPA

CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of August, 2023, I caused foregoing to be electronically filed with the Clerk of Court using the e-filing system which will send notification to such filing counsel of record:

Andrew Mills Holford, attorney for Judgment Debtor

/s/ Maria Mariano Guthrie
Maria Mariano Guthrie (0068049)

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**AFFIDAVIT OF SOTHEBY'S IN SUPPORT OF MOTION
TO SELL PERSONAL PROPERTY SEIZED BY SHERIFF
BY PRIVATE SELLING OFFICER**

I, AIMEE SCILLIERI, state that I am not a minor, I have personal knowledge of the facts set forth herein, and I am duly competent to testify regarding the following:

1. I am the Vice President, Associate General Counsel with Sotheby's, Inc. ("Sotheby's").

2. Established in 1744, Sotheby's is the world's largest, dynamic marketplace for art and luxury. Sotheby's has a global network of specialists spanning 40 countries and 44 departments, which include Contemporary Art, Modern and Impressionist Art, Old Masters, Chinese Works of Art, jewelry, watches, wine and spirits, and interiors, among many others.

3. Sotheby's Old Masters department focuses on artworks by European artists from the approximate period 1300 to 1800 and includes artists from the Early Renaissance through to the Romantic movement.

4. Sotheby's hosts over 600 auctions annually and offers a cross-category selection of items available for immediate purchase via both digital and physical shopping experiences as well as private sales.

5. Sotheby's Old Masters team has been the dominant force in the market for a generation. Sotheby's global team leads the market, selling a higher value of Old Masters at auction than any competitor for the eighth time in the last ten years including the sale of Rembrandt's *Self-Portrait* for £14.5 million. At the beginning of 2021, Sotheby's sold Sandro Botticelli's *Portrait of a young man holding a roundel* for \$92.2m, making it one of the most valuable Master paintings ever sold at auction.

6. In 2019, Sotheby's launched the largest ever selling exhibition of Old Masters in Asia with great success. In 2020, Sotheby's also partnered with Old Master galleries and dealers across the world to present unique online-only auctions that supported our industry through challenging times.

7. Sotheby's has extensive experience in selling art collections for individuals, estates, and companies throughout Ohio. Indeed, Sotheby's has registered for, and regularly pays sales tax to the State of Ohio.

8. Moreover, Dr. Carlo Croce has bought and sold his Old Master drawings and paintings through Sotheby's, and has sought Sotheby's appraisals of those artworks in the past, such that Sotheby's has extensive experience with such artwork.

9. There are very few auction houses in the United States with expertise to sell an Old Master's collection, which has a very particular group of collectors that Sotheby's has cultivated for decades.

10. Sotheby's is prepared to retain, and work with, an independent contractor based out of the State of Ohio with expertise in Old Masters if that would alleviate any jurisdictional concerns.

AFFIANT FURTHER SAYETH NAUGHT.

Aimee Scillieri
Aimee Scillieri

State of New York:

County of New York; ss,

The foregoing instrument was acknowledged before me on this 21st day of August, 2023
by Aimee Scillieri.

Paul Scropo Cossu
Notary Public
Seal:

PAUL SCROPPO COSSU
Notary Public, State of New York
No. 02C06281916
Qualified in New York County
Commission Expires May 28, 2025